

Shell, Karrie-Jo

From: Wetherington, Michele
Sent: Tuesday, March 22, 2022 4:21 PM
To: Hesterlee, Craig; Shell, Karrie-Jo; Wahlstrom-Ramler, Meghan; Dollar, Carla
Subject: RE: Rayonier Performance Fibers

Following up from our call today, EPA did not take action on GA's WQS revision to change legitimate water uses to designated uses of the water body. (b) (5)

(b) (5)

Thanks,

Michele

From: Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Sent: Tuesday, March 22, 2022 9:19 AM
To: Shell, Karrie-Jo <Shell.Karrie-Jo@epa.gov>; Wahlstrom-Ramler, Meghan <Wahlstrom-Ramler.Meghan@epa.gov>; Dollar, Carla <Dollar.Carla@epa.gov>
Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: RE: Rayonier Performance Fibers

KJ- can you schedule a meeting with this group so we can discuss as a team. I recall the issue but I'd like to be briefed on the concerns that you had at that time regarding color and organoleptics. Thanks.

Craig Hesterlee, Chief
NPDES Permitting Section
EPA Region 4 Water Division
404.562.9749

From: Shell, Karrie-Jo <Shell.Karrie-Jo@epa.gov>
Sent: Monday, March 21, 2022 9:31 AM
To: Wahlstrom-Ramler, Meghan <Wahlstrom-Ramler.Meghan@epa.gov>; Dollar, Carla <Dollar.Carla@epa.gov>
Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>; Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Subject: RE: Rayonier Performance Fibers

Below are some of the comments I transmitted to management in 2017 in a briefing paper and also in an email. In short, the permit failed to translate the findings for the color study into a permit decision regarding a color limit.

1. Previous briefing paper:

EPA Comments on the River Use Module of the Rayonier Color Study

Issue: The current NPDES permit includes a re-opener allowing the permit to be modified to include new color limits based on the results of a Color Study, which is currently being performed by the Rayonier mill. To avoid

a possible future objection by EPA pertaining to the pending permit modification, GA EPD needs provide the decision criteria (i.e., logic) the describes in detail how they will use all the data collected to make a future decision pertaining to a new color limit (see Part III.B.3 of the permit).

Background

- The Rayonier mill in Jesup, Georgia, produces a highly bleached wood pulp product referred to as “dissolving pulp” and “cellulose specialty pulp.” The pulp is used in the manufacturer of a wide range of products from diapers to LCD television screens.
- The mill discharges to the Altamaha River, which is designated for fishing and recreation.
- The pollutant of concern is color; GA has a narrative water color standard for color.
- There is a long history of environmental concerns about colored effluent from the Altamaha Riverkeeper (ARK). They challenged the 2001 permit based, in part, on its lack of a specific color limit.
- In 2008, EPD and Rayonier entered into a consent order requiring Rayonier to implement a color reduction plan that involved an investment of approximately \$75 million in new technology at the plant. From 2008 to 2013, the mill reduced the color by over 60%.
- Based on improvements in color the plant obtained following the 2008 consent order, EPD developed color limits for the 2015 draft permit with daily average limits, daily maximum limits, and annual average limits. The 2015 draft permit also required Rayonier to conduct a river study containing elements that focused on the impact of the effluent on the color of the river, use of the river, and the health of fish populations.
- EPD concluded that the color of the effluent did have the reasonable potential to violate the standards by darkening the receiving waters.
- In March of 2015, EPA notified EPD that it needed further information and clarification from EPD regarding the color limits and other data.
- On October 5, 2015, EPD issued a revised draft permit to EPA that contained more information on the color limits and the river study.
- EPA had the opportunity to object to the permit and prevent its issuance, however it did not do so, and the revised draft renewal permit became final on December 29, 2015.
- The final permit requires the mill complete a Color Study, consisting of five separate modules: 1) Evaluation of Mixing, 2) Evaluation of CORMIX modeling, 3) River Use Study, 4) Fish and Mussel Assessment, and 5) Fish Tissue Analysis for odor from organoleptic compounds.
- A draft copy of the Study Plan for the River Use Survey (Module 3) was sent to EPA for comment. The following are the goals of the survey as outlined in the permit:
 1. Document, through the performance and analysis of the surveys, whether there is a color, and/or odor “impairment” in the River adjacent to the Rayonier facility in Jesup, Georgia.
 2. Document 1) whether boaters and anglers frequent or avoid locations within the vicinity of the mill’s outfalls; 2) whether the anglers consume fish from these locations; and 3) observations about why they make the choices they do.
 3. Compile available data on recreational use of the River, i.e. fishing tournaments, boating events, etc.

Specific EPA Comments:

1. The Sampling and Quality Assurance Plan for the River Use Survey (Study Plan) states that the purpose is to develop data to “determine if the river’s designated use (fishing) is impaired.” As such, the plan should better address how persons that do not use the river will be incorporated.
2. The plan should incorporate a definition of “impaired”.
3. The Study Plan is biased towards people that use the river; it does not adequately address the researchers to measure any responses from people that do not use the river due to concerns about color or other types of pollution.
4. The Study Plan lacks details on how the questionnaire responses will be analyzed. Types of questions include multiple-choice and open-ended question to assess agreement with the questions. However, the Study Plan does not discuss how open-ended questions will be rated/scored.

5. The Study Plan states the researchers will compile information regarding boating and fishing licenses, as well as recreational events that take place along the river. However, the Study Plan does not explain why this information will be factored into a permit decision regarding a future color limit.
6. The Study Plan fails to provide details on statistical methods that will be used to analyze the data; no "decision criteria" was included.
7. The Plan fails to explain how the color and turbidity measurements, which will be taken on the same days as the intercept surveys, will be analyzed and factored into the final permit decision regarding a future color limit.

Pros:

EPA will be able to guide data collection prior to completion of the survey, which is a pivotal portion of the Color Study.

Cons:

Without the development of a decision criteria prior to analyzing the study's data, bias may be introduced. As such, the results may be deemed as not being scientifically valid, which could result in an EPA future objection to a modified permit.

Expected Outcome: GA EPD and EPA will have a meeting to discuss EPA's comment on Module 3 prior to the mill proceeding with the Color Study.

Contact: Karrie-jo Shell

Email comments sent to Molly Davis:

A draft copy of the Study Plan for the River Use Survey (Module 3) was sent to EPA for comment. The following are the goals of the survey as outlined in the permit:

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Specific Comments:

8. The Sampling and Quality Assurance Plan for the River Use Survey (Study Plan) states that the purpose is to develop data to "determine if the river's designated use (fishing) is impaired." As such, the plan should better address how persons that do not use the river will be incorporated.
9. The plan should incorporate a definition of "impaired".
10. The Study Plan is biased towards people that use the river; it does not adequately address the researchers to measure any responses from people that do not use the river due to concerns about color or other types of pollution. For instance, page 10 of the draft study plan states that Standard Industrial Codes will be used evaluate information relating to "organized recreational use". "Each respondent will be asked to list the specific recreational activities of which they are aware and in which they participate." There is no discussion or code for how the researchers will capture responses for people that do not use the river.

11. The plan mentions that some surveys will be mailed to residents in surrounding counties. However, how will the researchers know if the person receiving the survey understands the questions?
12. The Study Plan states the researchers will compile information regarding boating and fishing licenses, as well as recreational events that take place along the river. However, the Study Plan does not explain why this information will be factored into a permit decision regarding a future color limit.
13. Although the Study Plan mentions the statistical software that will be used, it fails to provide details on statistical parameters that will be used to analyze the data.
14. The plan lacks details on the “decision criteria” that will be used to determine if the waterbody’s “designated use (fishing) is impaired.” For instance, once the statistical analyses have been completed, what will be the value/metric used to determine if the waterbody is impaired, or not.
15. The Plan fails to explain how the color and turbidity measurements, which will be taken on the same days as the intercept surveys, will be analyzed and factored into the final permit decision regarding a future color limit.

Karrie-Jo Robinson Shell, P.E.
Environmental Engineer
US EPA Region 4
Water Division
61 Forsyth Street
Atlanta, GA 30303
(404) 562-9308

From: Shell, Karrie-Jo
Sent: Monday, March 21, 2022 5:29 AM
To: Wahlstrom-Ramler, Meghan <Wahlstrom-Ramler.Meghan@epa.gov>; Dollar, Carla <Dollar.Carla@epa.gov>
Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>; Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Subject: RE: Rayonier Performance Fibers

Thanks. I had extensive comments regarding color limits for the current permit, but management did not support them. The main concern was the lack of a sufficient color perception study. The study GA EPD used was flawed for several reasons, but we did not push back.

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From: Wahlstrom-Ramler, Meghan <Wahlstrom-Ramler.Meghan@epa.gov>
Sent: Thursday, March 17, 2022 4:43 PM
To: Shell, Karrie-Jo <Shell.Karrie-Jo@epa.gov>; Dollar, Carla <Dollar.Carla@epa.gov>
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Karrie-Jo and Carla,

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I know you two do pulp and paper so I wanted to give you a heads up. I'll keep my eye out for it in our mailbox.

Thanks,

Meghan

Meghan Wahlstrom | Environmental Engineer
Water Division | Permitting & Grants Branch | NPDES Permitting Section
Region 4 | Atlanta Federal Center | 61 Forsyth Street SW | Atlanta, GA 30303
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Shell, Karrie-Jo

Subject: Rayonier Jesup Mill
Location: Microsoft Teams Meeting

Start: Tue 3/22/2022 1:00 PM
End: Tue 3/22/2022 1:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Shell, Karrie-Jo
Required Attendees: Hesterlee, Craig; Dollar, Carla; Wetherington, Michele; Wahlstrom-Ramler, Meghan

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Join with a video conferencing device

<sip:teams@video.epa.gov>

Video Conference ID: (b) (6)

[Alternate VTC instructions](#)

Or call in (audio only)

(b) (6) United States, Atlanta

Phone Conference ID: (b) (6)

[Find a local number](#) | [Reset PIN](#)

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Shell, Karrie-Jo

From: Shell, Karrie-Jo
Sent: Tuesday, March 22, 2022 9:27 AM
To: Hesterlee, Craig
Subject: RE: Rayonier Performance Fibers

ok

Karrie-Jo Robinson Shell, P.E.
Environmental Engineer
US EPA Region 4
Water Division
61 Forsyth Street
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(404) 562-9308

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Environmental Engineer
US EPA Region 4
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61 Forsyth Street
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(404) 562-9308

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Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>; Hesterlee, Craig <Hesterlee.Craig@epa.gov>
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Meghan Wahlstrom | Environmental Engineer
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Shell, Karrie-Jo

From: Shell, Karrie-Jo
Sent: Monday, March 21, 2022 5:33 AM
To: Hesterlee, Craig
Subject: request to enter building on Tuesday March 22

I need to find my previous comments on the Rayonier Jesup mill.

Karrie-Jo Robinson Shell, P.E.
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Shell, Karrie-Jo

From: Shell, Karrie-Jo
Sent: Monday, March 21, 2022 5:24 AM
To: Hesterlee, Craig
Subject: RE: Rayonier

I'll check. I think I reviewed the most recent draft.

Karrie-Jo Robinson Shell, P.E.
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US EPA Region 4
Water Division
61 Forsyth Street
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(404) 562-9308

From: Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Sent: Thursday, March 17, 2022 4:21 PM
To: Shell, Karrie-Jo <Shell.Karrie-Jo@epa.gov>
Subject: FW: Rayonier

FYI

From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Thursday, March 17, 2022 3:24 PM
To: Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Subject: FW: Rayonier

Hi Craig,

Has anyone in your section seen the Rayonier (Georgia) permit yet? I spoke with Hutton Brown at SELC. SELC is concerned with how EPD will be apply the narrative in the permit. He asked if we'd seen an early draft yet, and I said I'd let him know.

Lisa, Jamal, and I worked on the WQS narrative issue which led to EPD withdrawing that WQS revision. I think we may all need to chat at some point about the narrative in this permit, but let me know your thoughts please.
You can see my call notes, below.

Notes:

EPD withdrew the insertion of the word "unreasonable" from the narrative WQS. But EPD has announced that even though EPA rejected it and they've withdrawn the WQS revision, they are going to apply the unreasonable standard because of the Court of Appeals ruling.

Jac Cap said that at the DNR meeting – EPD will apply the rule with an unreasonable standard.

Hutton thinks this is not legal. Poking EPA in the eye.

Relevant because Rayonier permit is coming out next month. EPD applying the narrative standard in the way that has been rejected by EPA.

Q: Has EPA seen the Rayonier permit recently? GA's AG's office said the permit is coming out in April. Michele will ask Craig if EPA has seen it yet and get back to Hutton with that answer.

Wants EPA to disapprove the permit because EPD will be applying the narrative illegally. Thinks this would get EPA's attention. Wants EPA to stop this.
SELC will comment on the permit when time comes. Will likely challenge the permit once issued.
Hutton will email me the DNR transcript.

Thanks,

Michele

From: Hutton Brown <hbrown@selcga.org>
Sent: Wednesday, March 16, 2022 8:26 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: Re: Rayonier

Hey Michelle. Tomorrow at 3 works best. Do you want to call me then? 404-226-1210.
Thanks

Hutton

On Mar 16, 2022, at 8:05 PM, Wetherington, Michele <Wetherington.Michele@epa.gov> wrote:

Hi Hutton,

Hope you're well. I can give you a call tomorrow at 10, 12, 1, or 3, let me know what works for you.

Thanks,

Michele

Michele Wetherington
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street S.W. Atlanta, GA 30303
(404) 562-9613
wetherington.michele@epa.gov

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From: Hutton Brown <hbrown@selcga.org>
Sent: Wednesday, March 16, 2022 4:32 PM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Subject: Rayonier

Lisa, hi- I was hoping to talk to you about the Rayonier permit if you get a minute. Can you please let me know a good time to talk. Or call me at (b) (6)

Thanks

Hutton

Hutton Brown

Senior Attorney

Southern Environmental Law Center
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Shell, Karrie-Jo

From: Wahlstrom-Ramler, Meghan
Sent: Thursday, March 17, 2022 4:43 PM
To: Shell, Karrie-Jo; Dollar, Carla
Cc: Wetherington, Michele; Hesterlee, Craig
Subject: Rayonier Performance Fibers

Karrie-Jo and Carla,

Just wanted to give you two a heads up that GA might be public noticing their Rayonier permit in April (GA0003620). I think there might be some concerns regarding some narrative WQS where they might be trying to apply something our standards section rejected. Michele (copied on this email) brought it to our sections attention.

I know you two do pulp and paper so I wanted to give you a heads up. I'll keep my eye out for it in our mailbox.

Thanks,

Meghan

Meghan Wahlstrom | Environmental Engineer
Water Division | Permitting & Grants Branch | NPDES Permitting Section
Region 4 | Atlanta Federal Center | 61 Forsyth Street SW | Atlanta, GA 30303
(404) 562-9316 | wahlstrom-ramler.meghan@epa.gov

Shell, Karrie-Jo

From: Hesterlee, Craig
Sent: Thursday, March 17, 2022 4:21 PM
To: Shell, Karrie-Jo
Subject: FW: Rayonier

FYI

From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Thursday, March 17, 2022 3:24 PM
To: Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Subject: FW: Rayonier

Hi Craig,

Has anyone in your section seen the Rayonier (Georgia) permit yet? I spoke with Hutton Brown at SELC. SELC is concerned with how EPD will be apply the narrative in the permit. He asked if we'd seen an early draft yet, and I said I'd let him know.

Lisa, Jamal, and I worked on the WQS narrative issue which led to EPD withdrawing that WQS revision. I think we may all need to chat at some point about the narrative in this permit, but let me know your thoughts please. You can see my call notes, below.

Notes:

EPD withdrew the insertion of the word "unreasonable" from the narrative WQS. But EPD has announced that even though EPA rejected it and they've withdrawn the WQS revision, they are going to apply the unreasonable standard because of the Court of Appeals ruling.

Jac Cap said that at the DNR meeting – EPD will apply the rule with an unreasonable standard.

Hutton thinks this is not legal. Poking EPA in the eye.

Relevant because Rayonier permit is coming out next month. EPD applying the narrative standard in the way that has been rejected by EPA.

Q: Has EPA seen the Rayonier permit recently? GA's AG's office said the permit is coming out in April. Michele will ask Craig if EPA has seen it yet and get back to Hutton with that answer.

Wants EPA to disapprove the permit because EPD will be applying the narrative illegally. Thinks this would get EPA's attention. Wants EPA to stop this.

SELC will comment on the permit when time comes. Will likely challenge the permit once issued.

Hutton will email me the DNR transcript.

Thanks,

Michele

From: Hutton Brown <hbrown@selcga.org>
Sent: Wednesday, March 16, 2022 8:26 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: Re: Rayonier

Hey Michelle. Tomorrow at 3 works best. Do you want to call me then? 404-226-1210.

Thanks

Hutton

On Mar 16, 2022, at 8:05 PM, Wetherington, Michele <Wetherington.Michele@epa.gov> wrote:

Hi Hutton,

Hope you're well. I can give you a call tomorrow at 10, 12, 1, or 3, let me know what works for you.

Thanks,

Michele

Michele Wetherington
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street S.W. Atlanta, GA 30303
(404) 562-9613
wetherington.michele@epa.gov

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From: Hutton Brown <hbrown@selcga.org>
Sent: Wednesday, March 16, 2022 4:32 PM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Subject: Rayonier

Lisa, hi- I was hoping to talk to you about the Rayonier permit if you get a minute. Can you please let me know a good time to talk. Or call me at (b) (6)

Thanks

Hutton

Hutton Brown
Senior Attorney

Southern Environmental Law Center
10 10th St NW, Suite 1050
Atlanta, GA 30309

Office (404) 521-9900
Fax (404) 521-9909

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Shell, Karrie-Jo

From: Hesterlee, Craig
Sent: Thursday, March 17, 2022 4:20 PM
To: Shell, Karrie-Jo
Subject: FW: Rayonier - FW: cathy.barnette@dnr.ga.gov sent you January 28, 2022 Board of Natural Resources Recording via WeTransfer

KJ- are you our NPDES POC on the Rayonier permit (I think there is more than one in GA)?

Craig Hesterlee, Chief
NPDES Permitting Section
EPA Region 4 Water Division
404.562.9749

From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Thursday, March 17, 2022 3:38 PM
To: Hesterlee, Craig <Hesterlee.Craig@epa.gov>; Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Subject: Rayonier - FW: cathy.barnette@dnr.ga.gov sent you January 28, 2022 Board of Natural Resources Recording via WeTransfer

DNR meeting transcript below.

From: Hutton Brown <hbrown@selcga.org>
Sent: Thursday, March 17, 2022 3:29 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Cc: Megan Huynh <mhuynh@selcga.org>
Subject: Fw: cathy.barnette@dnr.ga.gov sent you January 28, 2022 Board of Natural Resources Recording via WeTransfer

Michelle, thank you very much for talking to me just now. As we discussed, we have been told the Rayonier permit will be coming out for comment in April sometime. As we also discussed, EPD has publicly announced that it is going to continue to apply the narrative WQS with an unreasonableness standard even though EPA rejected that revision and, in fact, Georgia withdrew the word "unreasonably" in response to EPA's action and the DNR board approved Georgia's revision of the rule without the word. I am forwarding a recording of the DNR meeting where this was discussed and voted on, and in this meeting the water director Jac Capp says they will effectively be ignoring EPA's disapproval. The recording of that part of the meeting begins at the 53-minute mark, and we have transcribed the relevant part below.

As I mentioned, we don't see how this could possibly be legal. We hope that EPA will closely scrutinize this permit. The Rayonier facility has long been one of the environmental scourges in Georgia, and this is therefore much more than an academic matter. I am happy to talk to anyone at any time about this.

Thanks again,

Hutton

"We did have a few things that we had adopted previously and submitted to EPA for their approval and caught a couple of snags and so we're coming back and we're doing a little bit of clean up there.

The first item is about six years ago we were involved in a permit dispute with some members of the public and that dispute hinged on an interpretation of whether our water quality standards had a reasonableness standard or not. And the agencies interpretation was that there was a reasonableness standard built into the statute. An environmental group felt differently and that led us to come to the board and explicitly include a reasonableness standard in the text. To make a long story short, we went through that litigation and EPD prevailed completely and so that is the good news.

We had a little bit of trouble getting EPA to agree to the insertion of the word unreasonably into the rule. And so we're coming back now and taking that out. So the court decision that we have, it applies statewide. It's law. So that will be the interpretation of our rules going forward. But we're coming back and taking that word out of the rules and anticipate them getting the approval. "

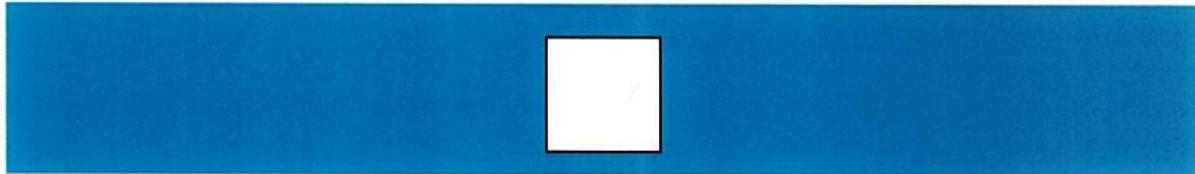
From: WeTransfer <noreply@wetransfer.com>

Sent: Thursday, March 17, 2022 2:31 PM

To: Hutton Brown <hbrown@selcga.org>

Subject: cathy.barnette@dnr.ga.gov sent you January 28, 2022 Board of Natural Resources Recording via WeTransfer

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cathy.barnette@dnr.ga.gov
sent you January 28, 2022 Board of
Natural Resources Recording

1 item, 126 MB in total • Expires on 24 March, 2022

January 28, 2022 Board of Natural Resources Recording The meeting begins
at the 40:00 mark.

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Shell, Karrie-Jo

From: Shell, Karrie-Jo
Sent: Wednesday, March 11, 2020 9:15 AM
To: Dickson, Audra; Hesterlee, Craig
Cc: Dollar, Carla
Subject: RE: Rayonier

Thanks, Audra.

Karrie-Jo Robinson-Shell, P.E.
Environmental Engineer
US EPA Region 4
Water Protection Division
61 Forsyth Street
Atlanta, GA 30303
(404) 562-9308

From: Dickson, Audra <Audra.Dickson@dnr.ga.gov>
Sent: Wednesday, March 11, 2020 8:40 AM
To: Hesterlee, Craig <Hesterlee.Craig@epa.gov>; Shell, Karrie-Jo <Shell.Karrie-Jo@epa.gov>
Subject: Rayonier

Please find attached the lasted court ruling regarding Rayonier Performance Fibers.

Please let me know if you have any comments or concerns.

Best Regards



Audra Dickson | Program Manager
Wastewater Regulatory Program
2 MLK Jr. Drive, Suite 1152 East
Atlanta, GA 30334
OFFICE: (404)-463-4934
EMAIL: audra.dickson@dnr.ga.gov

*Did you know starting **October 1, 2018** you may complete your wastewater and underground injection control applications online using the Georgia EPD Online System? You can access the site [here](#).*

**[BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

ALTAMAHA RIVERKEEPER, INC.,

Petitioner,

v.

**ENVIRONMENTAL PROTECTION
DIVISION, GEORGIA DEPARTMENT
OF NATURAL RESOURCES,**

Respondent,

and

**RAYONIER PERFORMANCE FIBERS,
LLC,**

Respondent/Intervenor.



FILED
OSAH

MAR 06 2020

Kevin Westray, Legal Assistant

Docket No.:

OSAH-BNR-WQC-1633136-11-Schroer

FINAL DECISION ON REMAND

This matter has been remanded to the Office of State Administrative Hearings to reconsider the Final Decision issued on September 30, 2016. The Final Decision reversed the decision of the Director of the Environmental Protection Division (“EPD”) of the Georgia Department of Natural Resources to issue a National Pollutant Discharge Elimination System (“NPDES”) Permit to Respondent/Intervenor Rayonier Performance Fibers, LLC (“Rayonier”). By agreement of the parties, the reconsideration is limited to the record evidence and the September 30, 2016 Final Decision’s Findings of Fact, which are incorporated herein by reference.¹ On remand, the Undersigned must reconsider the question of whether Petitioner Altamaha Riverkeeper, Inc. (“ARK”) presented sufficient evidence at the administrative hearing in 2016 to prove that the

¹ In addition, the statutory overview and other general legal authority cited in the Conclusions of Law in the September 30, 2016 Final Decision, which were not addressed on appeal, are also incorporated herein.

NPDES Permit violated Georgia's narrative water quality standard, as interpreted by the Georgia Court of Appeals. See Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269 (2018), cert. denied 2019 Ga. LEXIS 554 (Aug. 5, 2019).

In its opinion, the Court of Appeals held that the narrative standard established by Ga. Comp. R. & Regs. r. 391-3-6-.03 (5)(c) prohibits industrial discharges into Georgia's waterways only if such discharges produce objectionable conditions, such as color or odor, that "unreasonably" interfere with legitimate water uses. Id. at 256-57. Moreover, in assessing whether an industrial discharge unreasonably interferes with legitimate uses, the Court of Appeals held that the focus should be on "the public's use of the water" and not "any one or a small group of persons whose own aesthetic sensibilities might hinder their personal use of the river." Id. at 276. Finally, the Court of Appeals adopted EPD's position that the narrative standard was "not intended to convert the designated use of a water body to a more protected use." Id. at 274.

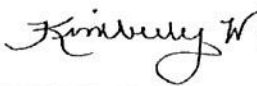

Having reconsidered the evidence in the record under these standards, the Court concludes that ARK failed to meet its burden of proof in this case. That is, although the evidence in the record did prove that the color and odor in the Rayonier discharge during low flow conditions will interfere with the use of the river downstream of the plant by some members of the public, the evidence was insufficient to prove that such interference was unreasonable. First, there was evidence of consistent use of the river by many people, both local residents who have grown accustomed to the malodor and color from the discharge, as well as visitors, who may not enjoy such conditions, but nevertheless choose to use the river for fishing, as well as for kayaking and other recreational activities. In addition, although the Court finds that ARK's witnesses represent a reasonable group of citizens with well-founded aesthetic objections to the odor and color of the Rayonier effluent, especially during low flow periods, it was not possible to gauge from the

evidence in the record how wide-spread their objections were throughout the general public or whether their objections were based on the current conditions on the river or on past experiences, when the color and odor levels from the discharge were higher. Without such evidence, the record does not support a conclusion that the general public's use of the river is unreasonably hindered due to the color and odor from the Rayonier discharge during low flow periods.

The Undersigned does not intend to trivialize the concerns expressed by ARK and their witnesses regarding the unpleasant odor and, to a lesser extent, the distasteful plumes of color, which extend down the Altamaha for a considerable distance from the outfalls and mar the enjoyment of the natural beauty of the river. However, applying the standard as articulated by the Court of Appeals, which allows EPD to weigh the various legitimate uses of Georgia's waterways and balance a host of competing values, including conservation, industry, and recreation, the Court is unable to conclude that ARK met its burden to prove that the NPDES Permit issued to Rayonier will allow unreasonable interference with the rights of the public to use and enjoy the Altamaha, even during low flow conditions.

Accordingly, ARK's petition is hereby **DENIED**.

SO ORDERED, this 6th day of March, 2020.



Kimberly W. Schroer
Administrative Law Judge

Shell, Karrie-Jo

From: Dickson, Audra <Audra.Dickson@dnr.ga.gov>
Sent: Wednesday, March 11, 2020 8:40 AM
To: Hesterlee, Craig; Shell, Karrie-Jo
Subject: Rayonier
Attachments: ARK Petion Denied 3-6-2020.pdf

Please find attached the lasted court ruling regarding Rayonier Performance Fibers.

Please let me know if you have any comments or concerns.

Best Regards



Audra Dickson | Program Manager
Wastewater Regulatory Program
2 MLK Jr. Drive, Suite 1152 East
Atlanta, GA 30334
OFFICE: (404)-463-4934
EMAIL: audra.dickson@dnr.ga.gov

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Shell, Karrie-Jo

From: Davis, Molly
Sent: Tuesday, February 12, 2019 3:01 PM
To: Shell, Karrie-Jo
Subject: FW: Rayonier 308 letter?

WQS sent out a 308.

From: Schwartz, Paul
Sent: Tuesday, February 12, 2019 2:53 PM
To: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; Davis, Molly <Davis.Molly@epa.gov>
Subject: RE: Rayonier 308 letter?

We did one and it came out of the standards/wq assessment/listing group – Frank Baker was the contact.

It went out Sept 29 2016 according to Rayonier's supplemental response which I have a copy of. I don't seem to have a copy of the original request or response.

From: Bragan, Mary Jo
Sent: Tuesday, February 12, 2019 2:42 PM
To: Davis, Molly <Davis.Molly@epa.gov>; Schwartz, Paul <Schwartz.Paul@epa.gov>
Cc: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>
Subject: Rayonier 308 letter?

Paul or Molly-

I'm meeting with EPD (Jack Capp and Lewis Hays) right now and they asked about the 308 letter for Rayonier. Did we send a 308 as part of the WQS issue? If so, what ever happened with it and can I give EPD an update?

Mary Jo

Shell, Karrie-Jo

From: Shell, Karrie-Jo
Sent: Tuesday, February 12, 2019 2:46 PM
To: Davis, Molly
Subject: Rayonier

No 308, but we did do a site visit and they sent us documents we requested during the visit.

Karrie-Jo Robinson-Shell, P.E.
Environmental Engineer
US EPA Region 4
Water Protection Division
61 Forsyth Street
Atlanta, GA 30303
(404) 562-9308

